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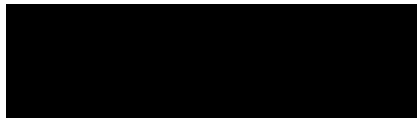


U.S. Citizenship  
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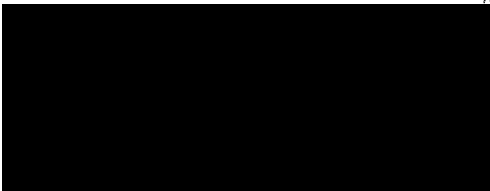
FILE: WAC 03 106 51400 Office: CALIFORNIA SERVICE CENTER Date: **JAN 18 2005**

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*for Michael T. Kelly*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a manufacturing company that seeks to employ the beneficiary as a production manager. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and previously submitted evidence.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a production manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail setting control panels and supervising machine maintenance; allocating jobs to employees; supervising a repair mechanic, a process supervisor, a machinery engineer, and process employees; planning and coordinating production; reporting the production plan to management; ordering parts, machinery, material, and determining their quality; determining the layout of machines and the reconstruction time schedule; cleaning the factory and managing utilities; and overseeing quality control. The beneficiary holds a bachelor's degree in engineering.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated that the proposed position's duties reflected those of a production manager, an occupation that does not require educational preparation.

On appeal, counsel states that the evidence does not support the director's decision. Counsel contends that the *Handbook* relays that a college degree is required for production managers, even for those who have worked their way up the ranks. Counsel states that the letter from OMNI Foods, a food manufacturer, confirmed that the occupation of production manager requires a degree.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the

occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel states that the duties of the proffered position resemble those performed by a production manager. The petitioner stated that the beneficiary will devote 10 percent of his time to work preparation; 10 percent to job allocation; 15 percent to control panel setting; 10 percent to machine checkup and maintenance; 10 percent to supervising employees; 15 percent to production planning and coordination; 5 percent to keeping the factory clean; 10 percent to purchasing material and equipment parts; 10 percent to quality control; and 5 percent to managing utilities such as electricity, natural gas, and water. A careful review of the *Handbook* discloses that these duties closely parallel those of a supervisor in the food-processing industry. The *Handbook* reports:

Food-processing occupations include many different types of workers who process raw food products into the finished goods sold by grocers or wholesalers, restaurants, or institutional food services. These workers perform a variety of tasks and are responsible for producing many of the food products found in every household.

The *Handbook* states that although training varies widely among food-processing occupations, most manual food-processing workers require little or no training prior to being hired. The *Handbook* discloses:

Food-machine operators and tenders usually are trained on the job. They learn to run the different types of equipment by watching and helping other workers. Training can last anywhere from a month to a year, depending on the complexity of the tasks and the number of products involved. A degree in the appropriate area—dairy processing for those working in dairy product operations, for example—is helpful for advancement to a lead worker or a supervisory role. . . .

The *Handbook* explains “[i]n processing plants, workers may advance to supervisory positions or become team leaders.”

The petitioner processes soybeans into tofu and pasta food products. About 14 employees engage in the processes of steaming, coagulating, pressing and cutting, placing the product in containers, and boxing and sealing the containers. As described in the *Handbook*, these employees are food-machine operators. Although the *Handbook* indicates that a degree in the appropriate area is helpful for advancement to a lead worker or a supervisory role, it does not state that employers require a degree. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, production manager.

The letter from Omni Foods Manufacturer fails to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The general manager of Omni Foods Manufacturer stated that his company employs a production manager “who has a baccalaureate degree.” But the general manager did not state that the degree is in a specific specialty.

Accordingly, the letter fails to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* reveals that the duties of the proffered position are performed by a supervisor of food-processing workers, an occupation that does not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent in a specific specialty for the position. The petitioner's September 22, 2003 letter stated that it previously employed two individuals as production managers: one held a baccalaureate degree in civil engineering, the other held a baccalaureate degree in agriculture. Given that the degrees are in wholly different disciplines, the petitioner cannot establish that it requires a degree in a *specific specialty* for the proposed position. Furthermore, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. Once again, the *Handbook* reveals that the duties of the proffered position are performed by a supervisor of food-processing workers, an occupation that does not require a bachelor's degree.

The evidentiary record fails to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) which requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As already discussed, the *Handbook* reveals that the proposed duties are performed by a supervisor of food-processing workers, an occupation that does not require a bachelor's degree.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.